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14 Attorneys for Defendant
15 CATERPILLAR INC.

16 UNITED STATES DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA

18 DIANA VEGA ZAMUDIO, an individual,

19 Plaintiff,

20 vs.

21 AEROTEK, INC., a Maryland Corporation;
22 CATERPILLAR INC., a Delaware
23 Corporation; and DOES 1 through 50,
24 inclusive,

25 Defendants.

Case No.: 1:21-at-01052

Kern County Case No.: BCV-21
102423

**NOTICE OF REMOVAL UNDER
28 U.S.C. §§ 1332, 1441 AND 1446
BY DEFENDANT CATERPILLAR
INC. WITH CONSENT OF
AEROTEK, INC.**

*[Filed concurrently with Defendant's
Request for Judicial Notice and the
Declaration of Horacio Ramirez]*

1 TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN
2 DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HER COUNSEL OF
3 RECORD:

4 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441 and
5 1446, Defendant Caterpillar Inc. (“Caterpillar”), with the consent of Defendant
6 Aerotek, Inc. (“Aerotek”), hereby removes to this Court the state court action
7 described below.

8 **Introduction**

9 This is a civil action for which this Court has original jurisdiction under 28
10 U.S.C. § 1332(a)(1), and for which removal to this Court is appropriate pursuant to
11 28 U.S.C. §§ 1441 and 1446, as discussed in more detail below.

12 **This Notice of Removal is Timely, and Aerotek Consents to the Removal**

13 1. On October 15, 2021, Plaintiff Diana Vega Zamudio (“Plaintiff”) filed
14 an employment-related lawsuit in the Superior Court of the State of California,
15 County of Kern, against Aerotek and Caterpillar (collectively, “Defendants”). The
16 state court lawsuit is captioned *Zamudio v. Aerotek, Inc., et al.*, Case No. BCV-21-
17 102423. Plaintiff’s caption also includes “Does 1 through 50” as additional
18 defendants. A copy of the state court Complaint is included within Exhibit A hereto.

19 2. The Complaint alleges causes of action principally related to the
20 termination of Plaintiff’s employment. In particular, Plaintiff alleges the following
21 causes of action against Defendants: (1) disability discrimination in violation of the
22 California Fair Employment and Housing Act (“FEHA”); (2) failure to provide a
23 reasonable accommodation in violation of FEHA; (3) failure to engage in a good faith
24 interactive process in violation of FEHA; (4) retaliation in violation of FEHA; and
25 (5) wrongful termination in violation of public policy. *See* Exhibit A.

26 3. On October 19, 2021, Caterpillar was served with the Summons and
27 Complaint. *See* Exhibit A. Pursuant to 28 U.S.C. § 1446(a), true and correct copies
28

1 of all process, pleadings, and orders served upon Aerotek and Caterpillar are attached
2 to this Notice of Removal as Exhibit A.

3 4. “The notice of removal of a civil action or proceeding shall be filed
4 within 30 days after the receipt by the defendant, through service or otherwise, of a
5 copy of the initial pleading setting forth the claim for relief upon which such action
6 or proceeding is based[.]” 28 U.S.C. § 1446(b)(1).

7 5. The 30-day timing requirement is met here because Caterpillar is filing
8 this Notice of Removal on November 18, 2021, which is the 30th day after the
9 Summons and Complaint were served on Caterpillar. *See Murphy Bros., Inc. v.*
10 *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (“the 30-day period for
11 removal runs” from the date that “the summons and complaint are served together”).

12 6. On November 17, 2021, Aerotek and Caterpillar filed their respective
13 Answers to the Complaint in Kern County Superior Court. *See Exhibits B and C.*¹

14 7. No documents other than those set forth in Exhibits A, B and C have
15 been served upon Defendants in the state court action.

16 8. The undersigned counsel for Caterpillar represents that he
17 communicated with Aerotek’s counsel of record in the state court action, Michael S.
18 Kun of Epstein Becker & Green, P.C., on November 18, 2021, and that Mr. Kun
19 confirmed that Aerotek consents to the removal of this action from Kern County
20 Superior Court to this Court. *See Proctor v. Vishay Intertech., Inc.*, 584 F.3d 1208,
21 1225 (9th Cir. 2009) (“[T]he filing of a notice of removal can be effective without
22 individual consent documents on behalf of each defendant. One defendant’s timely
23
24

25 ¹ It is well-settled that “[s]imply filing an answer in state court does not waive Defendants’ right
26 to remove because the Federal Rules of Civil Procedure themselves contemplate an answer in
27 state court prior to removal.” *Oster v. Standard Life Ins. Co.*, 2009 WL 1260174, at *2 (N.D. Cal.
28 May 6, 2009); *see also* Fed. R. Civ. P. 81(c)(2) (“After removal, repleading is unnecessary unless
the court orders it.”). Further, “[c]ourts may take judicial notice of state court filings that are
related to the litigation before the court.” *Natomas Gardens Inv. Group LLC v. Sinadinos*, 2009
WL 1363382, at *9 (E.D. Cal. May 12, 2009).

1 removal notice containing an averment of the other defendants’ consent and signed
2 by an attorney of record is sufficient.”).

3 **This Court Has Original Jurisdiction Pursuant to 28 U.S.C. § 1332(a)(1)**

4 9. “[A]ny civil action brought in a State court of which the district courts
5 of the United States have jurisdiction, may be removed by the defendant or the
6 defendants, to the district court of the United States for the district and division
7 embracing the place where such action is pending.” 28 U.S.C § 1441(a).

8 10. This Court has original jurisdiction over this action pursuant to 28
9 U.S.C. § 1332(a)(1), because, as explained below, the matter is between citizens of
10 different States and the matter in controversy exceeds the sum or value of \$75,000,
11 exclusive of interest and costs.

12 **There is Complete Diversity of Citizenship and**

13 **No Defendant is a Citizen of the State of California**

14 11. Plaintiff alleges in her Complaint that she was employed by Aerotek and
15 Caterpillar in Kern County. *See* Exhibit A, Complaint (“*Compl.*”) ¶ 1. Although the
16 Complaint does not identify where she lives, Aerotek’s records reflect that Plaintiff
17 resided in California throughout her employment with Aerotek, and information
18 Plaintiff provided in a background check form to Aerotek indicated that Plaintiff had
19 lived in California since at least August 2012. *See* Declaration of Horacio Ramirez
20 in Support of Notice of Removal (“*Ramirez Decl.*”) ¶ 5. Upon information and
21 belief, Plaintiff continues to reside in California.

22 12. Aerotek is incorporated under the laws of the State of Maryland, and
23 maintains its principal place of business in Maryland. *Ramirez Decl.* ¶ 3. Aerotek’s
24 corporate headquarters are located in Maryland as well. *Id.* The Complaint also
25 alleges that Aerotek is “a corporation duly organized and existing under and by virtue
26 of the laws of the State of Maryland.” *Compl.* ¶ 2.

27 13. Caterpillar is incorporated under the laws of the State of Delaware, and
28 has long maintained its principal place of business in the State of Illinois. The

1 Complaint also alleges that Caterpillar is “a corporation duly organized and existing
 2 under and by virtue of the laws of the State of Delaware.” Compl. ¶ 3. Caterpillar’s
 3 corporate headquarters are located in Illinois as well. By way of further example,
 4 just in the past few months alone (and in countless cases before then), Caterpillar
 5 successfully removed, on diversity grounds, numerous state court cases to federal
 6 district courts based on the specific assertion that the company is incorporated in
 7 Delaware and has its principal place of business in Illinois. *See, e.g., DeBlauwe v.*
 8 *Caterpillar Inc.*, Case No. 1:21-cv-11789, ECF No. 1 (E.D. Mich. Aug. 4, 2021);
 9 *Grasinger v. Caterpillar Inc.*, Case No. 2:21-cv-00956, ECF No. 1 (W.D. Pa. July
 10 21, 2021); *Lepard v. Caterpillar Inc.*, Case No. 1:21-cv-00099, ECF No. 1 (N.D.
 11 Miss. June 16, 2021); *Alvarado-Lopez v. Caterpillar Inc.*, Case No. 4:21-cv-01759,
 12 ECF No. 1 (S.D. Tex. May 28, 2021). Exhibit D.² Similarly, Caterpillar’s most
 13 recent Form 10-K, filed with the Securities and Exchange Commission on February
 14 17, 2021, states that the company is incorporated in Delaware and has its principal
 15 executive office at 510 Lake Cook Road, Suite 100, in Deerfield Illinois. Exhibit E.³

16 14. For purposes of removal, “a corporation shall be deemed to be a citizen
 17 of every State . . . by which it has been incorporated and of the State . . . where it has
 18 its principal place of business[.]” 28 U.S.C. § 1332(c)(1). As set forth above, the
 19 matter in controversy is between completely diverse parties: Plaintiff is, on
 20 information and belief, still a resident of California. Aerotek is a citizen of
 21 Maryland, and Caterpillar is a citizen of Delaware and Illinois. Neither corporate
 22 defendant is a citizen of the State of California. Further, the inclusion of the “Doe”

23 ² This Court can and should take judicial notice of these submissions if there is any doubt as to
 24 whether Caterpillar’s principal place of business is in Illinois. “Courts can properly take judicial
 25 notice of other court filings and matters of public records.” *Vance v. FaceFirst, Inc.*, 2021 WL
 5044010, at *1 n.1 (C.D. Cal. June 2, 2021).

26 ³ “Judicial notice of SEC filings is appropriate.” *In re Edward D. Jones & Co., L.P. Sec. Litig.*,
 27 2019 WL 2994486, at *2 (E.D. Cal. July 8, 2019) (citing *Dreiling v. Am. Exp. Co.*, 458 F.3d 942,
 28 946 n.2 (9th Cir. 2006). Accordingly, this Court, like others in the past, should take judicial
 notice of the referenced 10-K filing. *See, e.g., S. Cal. Gas Co. v. Syntellect, Inc.*, 2011 WL
 1168444, at *5 (S.D. Cal. Mar. 28, 2011), *vacated in part on other grounds*, 534 F. App’x, 637
 (9th Cir. July 25, 2013).

1 defendants is irrelevant because the removal statute specifically provides that “the
 2 citizenship of defendants sued under fictitious names shall be disregarded.” 28
 3 U.S.C. § 1441(b)(1). *See also Soliman v. Philip Morris Inc.*, 311 F.3d 966, 971 (9th
 4 Cir. 2002).

5 **The Amount in Controversy Exceeds \$75,000**

6 15. The Ninth Circuit has stressed that “[t]he amount in controversy is
 7 simply an estimate of the total amount in dispute, not a prospective assessment of
 8 defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir.
 9 2010). Here, the amount in controversy easily exceeds the \$75,000 threshold.

10 16. While the Complaint does not set forth any specific monetary amounts
 11 that Plaintiff seeks to recover in this litigation, it is noteworthy that the face of the
 12 Complaint reflects that Plaintiff filed her state court action as an “unlimited
 13 jurisdiction” case in which she claimed an “Amount in Controversy Over \$25,000”.
 14 *See Exhibit A.* Further, the prayer for relief on the last page of her Complaint seeks
 15 all of the following categories of damages and remedies: (1) “compensatory damages
 16 including lost wages, future loss [sic] wages, earnings, other employee benefits, and
 17 all other sums of money, together with interest on these amounts”; (2) “General
 18 damages . . . in an amount in excess of the jurisdictional minimum of the [state
 19 court];” (3) “a money judgment for mental pain and anguish and emotional distress”;
 20 (4) “All other special and incidental damages”; (5) “an award of punitive damages”;
 21 and (6) “attorney fees as provided by statute, including California Government Code
 22 section 12965(b)”. *Exhibit A, Compl. p. 12.* Based on these various categories of
 23 damages, the facts and authorities set forth below, and the evidence attached hereto,
 24 the amount in controversy easily exceeds \$75,000, exclusive of interest and costs. 28
 25 U.S.C. § 1446(c)(2); *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547,
 26 554 (2014).

27 17. For example, Plaintiff’s lost wages prior to removal coupled with
 28 potential future lost wages through trial suffice on their own to satisfy the \$75,000

1 threshold. When assessing the amount in controversy, “[c]ourts may separate wages
2 into two categories: ‘past wages—i.e., lost wages between the date of Plaintiff’s
3 termination and the date of removal—and future wages—i.e., lost wages between the
4 date of removal and trial.” *Baghdasarian v. Macy’s, Inc.*, 2021 WL 4026760, at *5
5 (C.D. Cal. Sept. 2, 2021) (denying motion to remand) (quoting *Fisher v. HNTB*
6 *Corp.*, 2018 WL 6323077, at *5 n.7 (C.D. Cal. Dec. 3, 2018)).

7 18. When Plaintiff’s employment ended on or about October 18, 2019, she
8 was earning \$14.75 per hour and working approximately 40 hours per week. Ramirez
9 Decl. ¶ 5. Accordingly, Plaintiff was earning approximately \$590 per week. More
10 than two years have passed since Plaintiff’s employment ended. If Plaintiff were to
11 recover back wages from October 18, 2019 to the present, which is approximately
12 108 weeks, those wages alone would total approximately **\$63,720** (i.e., \$14.75 per
13 hour, multiplied by 40 hours per week, multiplied by 108 weeks).

14 19. Moreover, lost future wages must be considered because Plaintiff claims
15 that her termination resulted in such losses. Compl. ¶¶ 32, 41, 50, 59, 66. “When
16 the date of a trial is not set, courts have found one year from the date of removal to
17 be a conservative trial date estimate.” *Baghdasarian*, 2021 WL 4026760, at *5; *see*
18 *also Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (“If a
19 plaintiff claims at the time of removal that her termination caused her to lose future
20 wages . . . then there is no question that future wages are ‘at stake’ in the litigation.”).
21 If this action were to proceed to trial in November 2022 – just one year from this
22 Notice of Removal, and Plaintiff remained unemployed during that period, Plaintiff
23 could seek an additional 52 weeks of lost wages, which equates to **\$30,680** (i.e.,
24 \$14.75 per hour, multiplied by 40 hours per week, multiplied by 52 weeks). Thus,
25 the value of Plaintiff’s lost wages prior to removal coupled with future wages through
26 trial would be **\$94,400**. Such damages do not even account for lost employment-
27 related benefits referenced in the Complaint.

20. Many other categories of damages increase the amount in controversy even further. For example, Plaintiff avers that, as a result of Defendants’ alleged unlawful conduct, she “suffered, and continues to suffer humiliation, embarrassment, mental and emotional distress and discomfort.” Compl. ¶¶ 33, 42, 51, 60, 67. Plaintiff’s potential damages for alleged pain and suffering and/or emotional distress bolster the conclusion that the \$75,000 threshold for the amount in controversy is easily met in this case. *See, e.g., Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (holding that emotional distress damages are included in determining amount in controversy); *see also Velez v. Roche*, 335 F. Supp. 2d 1022, 1038–40 (N.D. Cal. 2004) (surveying discrimination and harassment cases awarding emotional distress damages and concluding that “substantial jury awards of hundreds of thousands of dollars for non-economic damages have been upheld where there is evidence . . . that the plaintiff suffered heightened mental anguish.”). In *Kroske v. U.S. Bank Corp.*, the Ninth Circuit affirmed the district court’s conclusion that the case was properly removed to federal court where “emotional distress damages would add at least an additional \$25,000” to the value of the plaintiff’s discrimination claim, where she had only \$55,000 in lost wages. 432 F.3d 976, 980 (9th Cir. 2005). Therefore, it is reasonable to conclude that Plaintiff’s claims for emotional distress could add at least **\$25,000** to the amount in controversy here.

21. Plaintiff also alleges that Defendants acted with oppression and malice, and seeks punitive damages on that basis. Compl. ¶¶ 34, 43, 52, 61, 68. Under California law, punitive damages may be recovered “where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice.” Cal. Civ. Code § 2394(a). Punitive damages may be included in calculating the amount in controversy. *See Gibson*, 261 F.3d at 945 (“It is well established that punitive damages are part of the amount in controversy in a civil action.”). Although there may be no statutory limit on the amount of punitive damages that are recoverable in this matter, the Supreme Court has stated that, “in practice, few awards

1 exceeding a single-digit ratio between punitive and compensatory damages, to a
 2 significant degree, will satisfy due process.” *State Farm Mut. Auto Ins. Co. v.*
 3 *Campbell*, 538 U.S. 408, 425 (2003).

4 22. District courts within the Ninth Circuit have deemed a 1:1 ratio of
 5 punitive damages to damages for lost or unpaid wages and benefits as “conservative”
 6 for purposes of assessing the amount in controversy. *See e.g., Molina v. Target*
 7 *Corp.*, 2018 WL 3935347, at *4 (C.D. Cal. Aug. 14, 2018); *Jackson v. Compass Grp.*
 8 *USA, Inc.*, 2019 WL 3493991, at *6 (C.D. Cal. July 31, 2019). Thus, without
 9 conceding that an award of punitive damages would be warranted in this case, a 1:1
 10 ratio of punitive damages to damages for lost wages through trial would add another
 11 **\$94,400** to the amount in controversy.

12 23. The Complaint also includes claims for attorneys’ fees in each of the
 13 first four causes of action. Compl. ¶¶ 35, 44, 53, 62. “[W]here an underlying statute
 14 authorizes an award of attorneys’ fees . . . such fees may be included in the amount
 15 in controversy.” *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998).
 16 Plaintiff’s first four causes of action each arise under the FEHA, a statute that permits
 17 the prevailing party to recover attorneys’ fees. *See* Cal. Gov’t Code § 12965(b).
 18 Accordingly, attorneys’ fees may be included in calculating the amount in
 19 controversy. *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1035 (N.D. Cal. 2002)
 20 (noting that “attorneys’ fees in individual discrimination cases often exceed the
 21 damages”). The estimate of attorneys’ fees includes fees over the life of the case, not
 22 just the fees incurred at the time of removal. *Id.*

23 24. “Employment claims have been found to require substantial effort from
 24 counsel.” *Garcia v. ACE Cash Express, Inc.*, 2014 WL 2468344, at *5 (C.D. Cal.
 25 May 30, 2014) (internal quotations omitted). Courts have held that \$300 is a
 26 reasonable hourly rate for attorneys working on employment cases. *See Sasso v.*
 27 *Noble Utah Long Beach, LLC*, 2015 WL 898468,
 28 at *6 (C.D. Cal. Mar. 3, 2015). “Recent estimates for the number of hours expended

1 through trial for employment cases in [an employment disability discrimination case
2 alleging wrongful termination] have ranged from 100
3 to 300 hours.” *Id.* Accordingly, attorneys’ fees in employment matters “may
4 reasonably be expected to equal at least \$30,000 (100 hours x \$300 per hour).” *Id.*
5 Therefore, a conservative estimate of attorneys’ fees using a \$300 hourly rate, would
6 add **\$30,000** more to the amount in controversy.

7 25. For all of these reasons, the \$75,000 amount-in-controversy threshold is
8 satisfied based on the allegations in Plaintiff’s Complaint.

9 26. By removing this case based on diversity of citizenship, Defendants
10 intend no admission of liability and expressly reserve all procedural and substantive
11 defenses—including the right to move to compel arbitration of Plaintiff’s claims in
12 accordance with any applicable arbitration agreement—and to any and all claims for
13 damages asserted by Plaintiff.

14 **Venue is Proper in this District**

15 27. The Superior Court of the State of California, County of Kern, is located
16 within the Eastern District of California. 28 U.S.C. § 84(b). This Notice of Removal
17 is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

18 **Notice to Plaintiff and the State Court**

19 28. In accordance with 28 U.S.C. § 1446(d), Caterpillar will promptly file
20 this Notice of Removal, including exhibits, in the Kern County Superior Court after
21 removal, and serve Plaintiff with a copy of a Notice in the form attached hereto as
22 Exhibit F, which is incorporated by reference.

23 29. In addition, in the event that removal of this action is challenged,
24 Defendants reserve the right to submit evidence in opposition to any motion to
25 remand. *Owens*, 135 S. Ct. at 554.

26 WHEREFORE, Defendants give notice that they have removed to this Court
27 the action now pending in Kern County Superior Court.
28

1 Dated: November 18, 2021

MAYER BROWN

2
3 By: /s/ Andrew S. Rosenman
4 Andrew S. Rosenman

5 Attorneys for Defendant
6 CATERPILLAR INC.
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